

## § 26.2

CFR parts 25 or 200 provide otherwise. They also apply in any other case where a hearing is required by statute or regulation, to the extent that rules adopted under such statute or regulation are not inconsistent.

[72 FR 73492, Dec. 27, 2007]

### HEARING OFFICER

## § 26.2 Hearing officer, powers and duties.

(a) *Hearing officer.* Proceedings conducted under these rules shall be presided over by a hearing officer who shall be an Administrative Law Judge or Office of Appeals Judge authorized by the Secretary or designee to conduct proceedings under this part.

(b) *Time and place of hearing.* The hearing officer shall set the time and place of any hearing and shall give reasonable notice to the parties.

(c) *Powers of hearing officers.* The hearing officer shall conduct a fair and impartial hearing and take all action necessary to avoid delay in the disposition of proceeding and to maintain order. The hearing officer shall have all powers necessary to those ends, including but not limited to the power:

(1) To administer oaths and affirmations;

(2) To cause subpoenas to be issued as authorized by law;

(3) To rule upon offers of proof and receive evidence;

(4) To order or limit discovery as the interests of justice may require;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To hold conferences for the settlement or simplification of the issues by consent of the parties;

(7) To consider and rule upon all procedural and other motions appropriate in adjudicative proceedings;

(8) To take notice of any material fact not appearing in evidence in the record which is properly a matter of judicial notice; and

(9) To make and file determinations.

[48 FR 43304, Sept. 23, 1983, as amended at 72 FR 53878, Sept. 20, 2007]

## 24 CFR Subtitle A (4-1-08 Edition)

## § 26.3 Failure to comply with an order of the hearing officer.

If a party refuses or fails to comply with an order of the hearing officer, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including a determination against the noncomplying party.

## § 26.4 Ex parte communications.

(a) *Definition.* An ex parte communication is any communication with a hearing officer, direct or indirect, oral or written, concerning the merits of procedures of any pending proceeding which is made by a party in the absence of any other party.

(b) *Prohibition of ex parte communications.* Ex parte communications are prohibited except where:

(1) The purpose and content of the communication have been disclosed in advance or simultaneously to all parties; or

(2) The communication is a request for information concerning the status of the case.

(c) *Procedure after receipt of ex parte communication.* Any hearing officer who receives an ex parte communication which the hearing officer knows or has reason to believe is unauthorized shall promptly place the communication, or its substance, in all files and shall furnish copies to all parties. Unauthorized ex parte communications shall not be taken into consideration in deciding any matter in issue.

[48 FR 43304, Sept. 23, 1983; 48 FR 46980, Oct. 17, 1983]

## § 26.5 Disqualification of hearing officer.

When a hearing officer believes there is a basis for disqualification in a particular proceeding, the hearing officer shall withdraw by notice on the record and shall notify the Secretary and the official initiating the action under appeal. Whenever any party believes that the hearing officer should be disqualified from presiding in a particular proceeding, the party may file a motion with the hearing officer requesting the hearing officer to withdraw from presiding over the proceedings. This motion shall be supported by affidavits

setting forth the alleged grounds for disqualification. If the hearing officer does not withdraw, a written statement of his or her reasons shall be incorporated in the record and the hearing shall proceed.

#### REPRESENTATION OF THE PARTIES

##### § 26.6 Department representative.

In each case heard before a hearing officer under this part, the Department shall be represented by the General Counsel or designee.

##### § 26.7 Respondent's representative.

The party against whom the administrative action is taken may be represented at hearing as follows:

(a) Individuals may appear on their own behalf;

(b) A member of a partnership or joint venture may appear on behalf of the partnership or joint venture;

(c) A bona fide officer may appear on behalf of a corporation or association upon a showing of adequate authorization;

(d) An attorney who files a notice of appearance with the hearing officer may represent any party. For purposes of this paragraph, an attorney is defined as a member of the bar of a Federal court or of the highest court of any State; or

(e) An individual not included within paragraphs (a) through (d) of this section may represent the respondent upon an adequate showing, as determined by the hearing officer, that the individual possesses the legal, technical or other qualifications necessary to advise and assist in the presentation of the case.

##### § 26.8 Standards of practice.

Attorneys shall conform to the standards of professional and ethical conduct required of practitioners in the courts of the United States and by the bars of which the attorneys are members. Any attorney may be prohibited by the Hearing Officer from representing a party if the attorney is not qualified under § 26.7 or if such action is necessary to maintain order in or the integrity of the pending proceeding.

#### PLEADINGS AND MOTIONS

##### § 26.9 Notice of administrative action.

In every case, there shall be a notice of administrative action. The notice shall be in writing and inform the party of the determination. The notice shall state the reasons for the proposed or imposed action, except where general terms are permitted by 2 CFR part 2424. The notice shall inform the party of any right to a hearing to challenge the determination, and the manner and time in which to request such a hearing. A supplemental notice may be issued, at the discretion of the initiating official, to add to or modify the reasons for the action.

[72 FR 73492, Dec. 27, 2007]

##### § 26.10 Complaint.

(a) *Respondent.* A complaint shall be served upon the party against whom an administrative action is taken, who shall be called the respondent.

(b) *Grounds.* The complaint shall state the grounds upon which the administrative action is based. The grounds set forth in the complaint may not contain allegations beyond the scope of the notice of administrative action or any amendment thereto.

(c) *Notice of administrative action as complaint.* A notice of administrative action may serve as a complaint provided the notice states it is also a complaint and complies with paragraph (b) of this section.

(d) *Timing.* When the notice does not serve as a complaint, the complaint shall be served on or before the thirtieth day after a request for hearing is made.

##### § 26.11 Answer.

Respondent shall file an answer within thirty days of receipt of the complaint. The answer shall respond specifically to each factual allegation. A general denial shall not be permitted. Where a respondent intends to rely on an affirmative defense it shall be pleaded specifically. Allegations are admitted when not specifically denied in respondent's answer.